

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WASHINGTON

JOHN A. BALCZEWSKI,

Plaintiff,

vs.

JO ANNE B. BARNHART,  
Commissioner of Social Security,

Defendant

Civil No. CV-06-0161-MWL

ORDER

Based on the stipulation of the parties, it is hereby ORDERED that the Commissioner's final decision be reversed and remanded for further proceedings pursuant to sentence four of 42 U.S.C. §405(g). Upon remand to the Commissioner of Social Security, the Appeals Council will remand this case to another administrative law judge to (1) evaluate the Veteran's Administration's disability rating pursuant to *McCartey v. Massanari*, 298 F.3d 1076 (9<sup>th</sup> Cir. 2002) and other applicable authority; (2) further evaluate the impairments of cervical and degenerative disk disease and diabetes; (3) further evaluate Plaintiff's mental impairments; (4) update Plaintiff's medical records; (5) if deemed necessary, obtain medical expert testimony; (6) further evaluate Plaintiff's residual functional

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2 capacity in light of all of his severe physical and mental impairments; (7) if  
3 deemed necessary, obtain supplemental vocational expert testimony; and 8) if a  
4 consultative examination is ordered, any consultative examination is conducted by  
5 a treating health care provider, if a treating health care provider is deemed to be  
6 qualified, equipped, and willing to perform the examination for the fee schedule  
7 payment, and generally furnishes complete and timely reports, pursuant to  
8 20 C.F.R. §§ 404.1519g-j. Plaintiff may present new arguments and further  
9 medical evidence, if such evidence becomes available.

10 This case is reversed and remanded on the above grounds pursuant to  
11 sentence four of 42 U.S.C. § 405(g). The Commissioner's decision is not  
12 substantially justified, and upon proper presentation, this Court will consider  
13 Plaintiff's application for costs and attorney's fees under 28 U.S.C. § 2412(d) and  
14 406(b).

15 DATED this 22<sup>nd</sup> day of November, 2006.

16  
17 s/Michael W. Leavitt  
UNITED STATES MAGISTRATE JUDGE